

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Mary Rios,

Plaintiff,

v.

Felcor/CSS Holdings, L.P., a
Delaware Limited Partnership;

Felcor/CSS Hotels, LLC, a
Delaware Limited Liability
Company;

Defendants,

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Mary Rios complains of Felcor/CSS Holdings, L.P., a Delaware Limited Partnership; Felcor/CSS Hotels, LLC, a Delaware Limited Liability Company; (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She is substantially limited in her ability to walk. She is a paraplegic. She uses a wheelchair for mobility.

2. Defendants Felcor/CSS Holdings, L.P., a Delaware Limited

1 Partnership; Felcor/CSS Hotels, LLC, a Delaware Limited Liability Company;
2 own and operate the Embassy Suites by Hilton San Francisco Airport
3 Waterfront Hotel, located at 150 Anza Blvd., Burlingame, California,
4 currently and at all times relevant to this complaint.

5 3. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein, is
10 responsible in some capacity for the events herein alleged, or is a necessary
11 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
12 the true names, capacities, connections, and responsibilities of other
13 Defendants are ascertained.

14 15 **JURISDICTION:**

16 4. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 5. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26 27 **PRELIMINARY STATEMENT**

28 7. This is a lawsuit challenging the reservation policies and practices of a

1 place of lodging. Plaintiff does not know if any physical or architectural
2 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
3 violated any construction-related accessibility standard. Instead, this is about
4 the lack of information provided on the hotel's reservation website that would
5 permit plaintiff to determine if there are rooms that would work for him.

6 8. After decades of research and findings, Congress found that there was
7 a "serious and pervasive social problem" in America: the "discriminatory
8 effects" of communication barriers to persons with disability. The data was
9 clear and embarrassing. Persons with disabilities were unable to "fully
10 participate in all aspects of society," occupying "an inferior status in our
11 society," often for no other reason than businesses, including hotels and
12 motels, failed to provide information to disabled travelers. Thus, Congress
13 decided "to invoke the sweep of congressional authority" and issue a "national
14 mandate for the elimination of discrimination against individuals with
15 disabilities," and to finally ensure that persons with disabilities have "equality
16 of opportunity, full participation, independent living" and self-sufficiency.

17 9. As part of that effort, Congress passed detailed and comprehensive
18 regulations about the design of hotels and motels. But, as importantly,
19 Congress recognized that the physical accessibility of a hotel or motel means
20 little if the 61 million adults living in America with disabilities are unable to
21 determine which hotels/motels are accessible and to reserve them. Thus,
22 there is a legal mandate to provide a certain level of information to disabled
23 travelers.

24 10. But despite the rules and regulations regarding reservation procedures,
25 a 2019 industry article noted that: "the hospitality sector has largely
26 overlooked the importance of promoting accessible features to travelers."

27 11. These issues are of paramount important. Persons with severe
28 disabilities have modified their own residences to accommodate their unique

1 needs and to ameliorate their physical limitations. But persons with disabilities
2 are never more vulnerable than when leaving their own residences and having
3 to travel and stay at unknown places of lodging. They must be able to ascertain
4 whether those places work for them.

5
6 **FACTUAL ALLEGATIONS:**

7 12. Plaintiff planned on making a trip in October to the San Francisco,
8 California, area.

9 13. She chose the Embassy Suites by Hilton San Francisco Airport
10 Waterfront Hotel, located at 150 Anza Blvd., Burlingame, California, because
11 this hotel was at a desirable price and location.

12 14. Due to Plaintiff's condition, she is unable to, or seriously challenged in
13 her ability to, stand, ambulate, reach objects, transfer from her chair to other
14 equipment, and maneuver around fixed objects.

15 15. Thus, Plaintiff needs an accessible guestroom and she needs to be given
16 information about accessible features in hotel rooms so that she can
17 confidently book those rooms and travel independently and safely.

18 16. On September 17, 2020, while sitting bodily in California, Plaintiff
19 went to the Marriott San Francisco Union Square reservation website at
20 [https://www.hilton.com/en/hotels/sfobges-embassy-suites-san-francisco-](https://www.hilton.com/en/hotels/sfobges-embassy-suites-san-francisco-airport-waterfront/)
21 [airport-waterfront/](https://www.hilton.com/en/hotels/sfobges-embassy-suites-san-francisco-airport-waterfront/) seeking to book an accessible room at the location.

22 17. This website reservation system is owned and operated by the
23 Defendants and permits guests to book rooms at Embassy Suites by Hilton San
24 Francisco Airport Waterfront Hotel.

25 18. Plaintiff found that there was insufficient information about the
26 accessible features in the "accessible rooms" at the Hotel to permit her to
27 assess independently whether a given hotel room would work for her.

28 19. For example, Plaintiff needs to know that the bed has a compliant clear

1 space next to it so she can safely transfer from her wheelchair to the bed. Here
2 the Hotel website provides no information about the accessibility of the clear
3 space next to the bed.

4 20. As another example, Plaintiff has had tremendous difficulty using desks
5 and tables that did not provide knee and toe clearance for a wheelchair user to
6 pull up and under the table/desk. Here, the Hotel reservation website provides
7 no information about the accessibility of the table/desk in the accessible
8 guestroom. This leaves Plaintiff unsure she will be able to use the table/desk in
9 the Hotel room, which is important to her.

10 21. As another example, Plaintiff has had tremendous difficulty with using
11 lavatory sinks in the past because sinks were cabinet style sinks or had low
12 hanging aprons that did not provide knee clearance for a wheelchair user to
13 pull up and under or, alternatively, where the plumbing underneath the sink
14 was not wrapped with insulation to protect against burning contact to her
15 knees. Here, the Hotel reservation website provides no information about the
16 accessibility of the sinks in the accessible guestroom. Making matters worse,
17 the photos that accompany the room descriptions state: "Any corresponding
18 photo may not reflect the specific accessible room type or room feature". This
19 makes it even less clear if the room is accessible to Plaintiff.

20 22. Plaintiff does not need an exhaustive list of accessibility features.
21 Plaintiff does not need an accessibility survey to determine if a room works for
22 her. Plaintiff, like the vast majority of wheelchair users, simply needs a handful
23 of features to be identified and described with a modest level of detail:

- 24 • For the doors, Plaintiff simply needs to know if she can get into the hotel
25 room and into the bathroom. This is a problem that has created
26 tremendous problems for the Plaintiff in the past. A simple statement
27 that the hotel room entrance and interior doors provide at least 32
28 inches of clearance is enough to provide Plaintiff this critical piece of

1 information about whether she can fit her wheelchair into the hotel
2 rooms.

- 3 • For the beds themselves, the only thing Plaintiff needs to know (and the
4 only thing regulated by the ADA Standards) is whether she can actually
5 get to (and into) the bed, i.e., that there is at least 30 inches width on the
6 side of the bed so her wheelchair can get up next to the bed for transfer.
7 This is critical information because Plaintiff cannot walk and needs to
8 pull her wheelchair alongside the bed.
- 9 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
10 know that it has sufficient knee and toe clearance so that she can use it.
11 A simple statement like “the desk provides knee and toe clearance that
12 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
13 deep” is more than sufficient. Because Plaintiff is confined to a
14 wheelchair, she needs to know this information to determine if the desk
15 is accessible to and useable by her.
- 16 • For the restroom toilet, Plaintiff only needs to know two things that
17 determine if she can transfer to and use the toilet; (1) that the toilet seat
18 height is between 17-19 inches (as required by the ADA Standards) and
19 (2) that it has the two required grab bars to facilitate transfer.
- 20 • For the restroom sink, the Plaintiff two things that will determine
21 whether she can use the sink from her wheelchair: (1) can she safely get
22 her knees under the toilet? To wit: does the sink provide the knee
23 clearance (27 inches high, 30 inches wide, 17 inches deep) and is any
24 plumbing under the sink wrapped with insulation to protect against
25 burning contact? The second thing is whether the lavatory mirror is
26 mounted at a lowered height so that wheelchair users can see it. A
27 simple statement like: “the lavatory sink provides knee clearance of at
28 least 30 inches wide, 27 inches tall and 17 inches deep, all of the under-

1 sink plumbing is wrapped, and the lowest reflective edge of the mirror is
2 no more than 40 inches high” would suffice.

- 3 • Finally, for the shower, Plaintiff needs to know only a handful of things:
4 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
5 in), (2) whether it has an in-shower seat; (3) that there are grab bars
6 mounted on the walls; (4) that there is a detachable hand-held shower
7 wand for washing herself and (5) that the wall mounted accessories and
8 equipment are all within 48 inches height.

9 23. This small list of items are the bare necessities that Plaintiff must know
10 to make an independent assessment of whether the “accessible” hotel room
11 works for her. These things comprise the basics of what information is
12 reasonably necessary for Plaintiff (or any wheelchair user) to assess
13 independently whether a given hotel or guest room meets his or her
14 accessibility needs.

15 24. Other accessibility requirements such as slopes of surfaces, whether the
16 hand-held shower wand has a non-positive shut off valve, the temperature
17 regulator, the tensile strength and rotational design of grab bars, and so many
18 more minute and technical requirements under the ADA are beyond what is a
19 reasonable level of detail and Plaintiff does not expect or demand that such
20 information is provided.

21 25. But because the Defendants have failed to identify and describe the core
22 accessibility features in enough detail to reasonably permit individuals with
23 disabilities to assess independently whether a given hotel or guest room meets
24 her accessibility needs, the Defendants fail to comply with its ADA obligations
25 and the result is that the Plaintiff is unable to engage in an online booking of
26 the hotel room with any confidence or knowledge about whether the room will
27 actually work for her due to her disability.

28 26. This lack of information created difficulty for the Plaintiff and the idea

1 of trying to book this room -- essentially ignorant about its accessibility --
 2 caused difficulty and discomfort for the Plaintiff and deterred her from
 3 booking a room at the Hotel

4 27. Plaintiff travels frequently and extensively, not only for non-litigation
 5 reasons but also because she is an ADA tester and actively engaged in finding
 6 law breaking businesses and hauling them before the courts to be penalized
 7 and forced to comply with the law.

8 28. As she has in the past, Plaintiff will continue to travel to the San
 9 Francisco area on a regular and ongoing basis and will patronize this Hotel
 10 once it has been represented to her that the Defendant has changed its policies
 11 to comply with the law and to determine if the Hotel is physically accessible as
 12 well as complying with required reservation procedures. Plaintiff will,
 13 therefore, be discriminated against again, i.e., be denied her lawfully entitled
 14 access, unless and until the Defendant is forced to comply with the law.

15 29. Plaintiff has reason and motivation to use the Defendant's Hotel
 16 reservation system and to stay at the Defendant's Hotel in the future. Among
 17 her reasons and motivations are to assess these policies and facilities for
 18 compliance with the ADA and to see her lawsuit through to successful
 19 conclusion that will redound to the benefit of herself and all other similarly
 20 situated. Thus, Plaintiff routinely revisits and uses the facilities and
 21 accommodations of places she has sued to confirm compliance and to enjoy
 22 standing to effectuate the relief promised by the ADA.

23
 24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

25 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 26 Defendants.) (42 U.S.C. section 12101, et seq.)

27 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 31. Under the ADA, it is an act of discrimination to fail to make reasonable
3 modifications in policies, practices, or procedures when such modifications
4 are necessary to afford goods, services, facilities, privileges advantages or
5 accommodations to person with disabilities unless the entity can demonstrate
6 that taking such steps would fundamentally alter the nature of the those goods,
7 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
8 12182(B)(2)(A)(ii).

9 32. Specifically, with respect to reservations by places of lodging, a
10 defendant must ensure that its reservation system, including reservations
11 made by “any means,” including by third parties, shall:

- 12 a. Ensure that individuals with disabilities can make
13 reservations for accessible guest rooms during the same
14 hours and in the same manner as individuals who do not
15 need accessible rooms;
- 16 b. Identify and describe accessible features in the hotels and
17 guest rooms offered through its reservations service in
18 enough detail to reasonably permit individuals with
19 disabilities to assess independently whether a given hotel
20 or guest room meets his or her accessibility needs; and
- 21 c. Reserve, upon request, accessible guest rooms or specific
22 types of guest rooms and ensure that the guest rooms
23 requested are blocked and removed from all reservations
24 systems.

25 *See* 28 C.F.R. § 36.302(e).

26 33. Here, the defendant failed to modify its reservation policies and
27 procedures to ensure that it identified and described accessible features in the
28 hotels and guest rooms in enough detail to reasonably permit individuals with

1 disabilities to assess independently whether a given hotel or guest room meets
 2 his or her accessibility needs and failed to ensure that individuals with
 3 disabilities can make reservations for accessible guest rooms during the same
 4 hours and in the same manner as individuals who do not need accessible
 5 rooms.

6
 7 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 9 Code § 51-53.)

10 34. Plaintiff repleads and incorporates by reference, as if fully set forth
 11 again herein, the allegations contained in all prior paragraphs of this
 12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 13 that persons with disabilities are entitled to full and equal accommodations,
 14 advantages, facilities, privileges, or services in all business establishment of
 15 every kind whatsoever within the jurisdiction of the State of California. Cal.
 16 Civ. Code §51(b).

17 35. The Unruh Act provides that a violation of the ADA is a violation of the
 18 Unruh Act. Cal. Civ. Code, § 51(f).

19 36. Defendants’ acts and omissions, as herein alleged, have violated the
 20 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
 21 reservation policies and practices.

22 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty
 23 and discomfort for the plaintiff, the defendants are also each responsible for
 24 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

25
 26 **PRAYER:**

27 Wherefore, Plaintiff prays that this Court award damages and provide
 28 relief as follows:

1 1. For injunctive relief, compelling Defendants to comply with the
2 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
3 plaintiff is not invoking section 55 of the California Civil Code and is not
4 seeking injunctive relief under the Disabled Persons Act at all.

5 2. Damages under the Unruh Civil Rights Act, which provides for actual
6 damages and a statutory minimum of \$4,000 for each offense.

7 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
8 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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11 Dated: January 11, 2021

CENTER FOR DISABILITY ACCESS

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By: _____
Russell Handy, Esq.
Attorneys for Plaintiff